

**01704**

**1994/05/23**

UNCLASSIFIED

REPORT TO CONGRESS CONCERNING RENEWAL OF WAIVER  
AUTHORITY FOR THE PEOPLE'S REPUBLIC OF CHINA

RELEASED

Pursuant to section 402(d)(1) of the Trade Act of 1974 (hereinafter "the Act"), having determined that renewal of the waiver authority granted by section 402(c) of the Act for the twelve-month period beginning July 3, 1994 will substantially promote the objectives of section 402, I have today determined that continuation of the waiver currently applicable to China will also substantially promote the objectives of section 402 of the Act. My determination is attached and is incorporated herein.

Freedom of Emigration Determination

In FY 1993, 25,602 U.S. immigrant visas were issued to Chinese nationals worldwide. Visas were made available to the Chinese up to the numerical limitation under U.S. immigration law. The principal restraint on increased emigration continues to be the capacity and willingness of other nations to absorb Chinese immigrants and undocumented Chinese migrants, not Chinese policy. After considering all the relevant information, I have concluded that continuing the section 402 waiver will preserve the gains already achieved on freedom of emigration and encourage further progress. The Chinese have resolved all pending emigration ("blocked passport") cases we have pressed upon them this year. There, thus, was significant progress in this area. We are prepared to present our views officially to the Chinese should we become aware of any pertinent new information in this area.

Chinese Foreign Travel Policies

In FY 1993, 131,261 U.S. non-immigrant visas were issued worldwide to tourists and business visitors from China, an approximate 90 percent increase over FY 1992. The number of business visas issued to Chinese nationals increased by more than 100 percent in FY 1993 (to 107,033), reflecting Deng Xiaoping's policies of accelerating China's opening to the outside world. In fact, the Chinese government has sponsored a large number of Chinese business delegations to the U.S. An April 1993 US-China consular agreement provides for a (6 month) multiple entry visa for business visitors.

In FY 1993, 19,973 student visas (including exchange student visas) were issued, up from the FY 1992 total of 18,908.

UNCLASSIFIED

# UNCLASSIFIED

-2-

Chinese students continue to return from overseas for visits without any apparent problem. With the exception of Shen Tong, whose case we noted in last year's report, we are not aware of any case in which Chinese living in the U.S. who returned to China for visits after June 1989 were prevented from leaving again.

## Executive Order 12850 (May 28, 1993)

On May 28, 1993, I issued Executive Order 12850, "Conditions for Renewal of Most-Favored-Nation-Status for the People's Republic of China." That order (attached at Tab ) mandated that the Secretary of State not recommend extension unless he determined (i) that such extension will substantially promote the freedom of emigration objectives of Jackson-Vanik, and (ii) that the PRC "is complying with the 1992 bilateral agreement...concerning prison labor." It further specified that the Secretary of State should, in making his recommendation, "also determine whether China has made overall, significant progress with respect to" five areas of human rights concern:

- taking steps to begin adhering to the Universal Declaration of Human Rights;
- releasing and providing an acceptable accounting for Chinese citizens imprisoned or detained for the non-violent expression of their political and religious beliefs;
- ensuring humane treatment of prisoners;
- protecting Tibet's distinctive religious and cultural heritage;
- permitting international radio and television broadcasts into China.

The Order also provided that I, and other appropriate U.S. officials, "shall pursue resolutely all legislative and executive actions to ensure that China abides by its commitments to follow fair, nondiscriminatory trade practices in dealing with U.S. businesses, and adheres to the nuclear Non-Proliferation Treaty, the Missile Technology Control Regime guidelines and parameters, and other nonproliferation commitments."

My Section 402 waiver extension report of May 28, 1993 also identified a number of specific types of possible PRC actions

# UNCLASSIFIED

## UNCLASSIFIED

that I would take into account in considering the waiver extension this year.

This report will address pertinent developments in each of those areas.

### Executive Order Section 1(a) Mandatory Conditions

#### o Freedom of Emigration

Keeping a promise made by Foreign Minister Qian Qichen to Secretary Christopher, the Chinese have resolved all pending emigration ("blocked passport") cases we have pressed upon them this year. These individuals include close relatives of prominent dissidents, some of whom held government jobs and had access to politically sensitive information. They also include Yu Haocheng, whose case the Chinese had indicated would be especially difficult to resolve because of issues arising from Professor Yu's access to classified materials through his past affiliation with a research institute under the Ministry of Public Security.

The principal barrier to departure of ordinary Chinese is inability to obtain a visa. Record numbers of Chinese businessmen, students, and tourists travelled to the U.S. last year according to our visa statistics. In FY 1993, 131,261 U.S. visas were issued worldwide to tourists and business visitors from China, an approximate 90 percent increase over FY 1992. In FY 1993, 19,973 student visas (including exchange student visas) were issued, up from the FY 1992 total of 18,908.

Chinese students continue to return from overseas for visits without any apparent problem. We are not aware of any case over the past year in which Chinese students living in the U.S. who returned to China for visits were prevented from leaving again.

In sum, the Chinese met our specific freedom of emigration goals. It is therefore my judgment that the Jackson-Vanik criteria and the EO requirement in this area have been met, and that further cooperation on freedom of emigration issues would be promoted by extension of the section 402 waiver.

#### o Prison Labor Agreement

UNCLASSIFIED

# UNCLASSIFIED

-4-

Section 307 of the (Smoot-Hawley) Tariff Act of 1930 prohibits the importation into the U.S. of "all goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal conditions." Regulations issued by the U.S. Customs Service pursuant to this section establish procedures for detaining, investigating and excluding goods believed to violate its provisions. In addition, the federal Criminal Code provides that anyone who "transports in interstate commerce or from any foreign country into the United States any goods, wares or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners," shall be subject to fine, imprisonment, or both.

On August 7, 1992, the U.S. and China signed the "Memorandum of Understanding between the United States of America and the People's Republic of China on Prohibiting Import and Export Trade in Prison Labor Products" ("the MOU"). The MOU makes no reference to specific U.S. laws respecting prison labor, but is predicated expressly on the need to reach mutual "understanding on the question of prohibiting import and export trade between the two countries that violates the relevant laws and regulations of either...concerning products produced by prison or penal labor."

The MOU establishes certain obligations for each party to cooperate with the other upon request in investigating and resolving suspected violations. It does not obligate either party to ensure that there is no violation of the other's laws. Its specific provisions: (1) require that the parties "promptly" investigate and "immediately" report in response to requests made by the other party "based upon specific information;" (2) obligate responsible officials of the parties to meet and exchange relevant information regarding compliance, etc., upon request; (3) require the parties, upon request, to exchange information regarding suspected violations; and, (4) obligate the parties, upon request, to "promptly arrange and facilitate" visits by responsible officials of the other party to help resolve specific cases.

On March 14, 1994, during Secretary Christopher's trip to Beijing, the Chinese signed a "Statement of Cooperation on the Implementation of the Memorandum of Understanding Between the United States of America and the People's Republic of China on Prohibiting Import and Export Trade in Prison Labor Products" ("Joint Statement") committing them to prompt compliance with the MOU and authorizing visits to all facilities, including labor camps. The Joint Statement also requires the Chinese to provide written reports of investigations within 60 days following presentation of evidence by the United States and to arrange facility visits within

UNCLASSIFIED

## UNCLASSIFIED

60 days of receiving written requests by the U.S.

Prior to this March, technical compliance with the MOU had been slow and problematic, owing to unresolved questions over the precise meaning of language and of respective obligations. Signature of the Joint Statement satisfactorily clarified these issues. Since the signing of the Joint Statement, compliance has proceeded well. U.S. officials have visited several facilities relating to relating to two existing detention orders. Two additional prison visits have been scheduled. We have also begun to receive responses to information requests in a more timely and detailed fashion. This compliance is sufficient to permit a judgment that the EO criteria have been met.

Nevertheless, we are reviewing allegations that Chinese prison labor exports are continuing to come into the United States, such as those made May 18 by former political prisoner Harry Wu. Although the Chinese government has formally declared these allegations to be unfounded, U.S. Customs is examining these and all other credible allegations. Customs will take appropriate enforcement actions should such be warranted.

In sum, I have concluded that China is complying with terms of the MOU. I further judge that continuation of China's MFN status will serve to ensure that the improved compliance effort we have witnessed since last March continues.

### EO Section 1(b) "Overall, Significant Progress":

#### o Universal Declaration of Human Rights

On April 6, Foreign Minister Qian responded to an earlier formal request by Secretary Christopher by making a public statement affirming China's adherence to the Universal Declaration of Human Rights.

However, during the course of the past year the Chinese government has taken a number of actions inconsistent with the Universal Declaration. Harassment and detention of political dissidents and the crackdown on independent churches in some areas are examples of the abridgement of freedoms of speech, association, and religion. The Chinese government's refusal to allow labor activist Han Dongfang to return to China, and its arbitrary cancellation of his passport, rendered him a stateless person in violation of the UDHR's provision on the right to return.

#### o Prisoner Releases/Accounting

The Chinese maintain rigorous secrecy regarding many if not

UNCLASSIFIED

## UNCLASSIFIED

-6-

most arrests and releases in a vast prison system. Our information on arrests and releases is therefore fragmentary and often reliant upon second and third-hand sourcing. According to almost all observers, the Chinese have detained far more political or religious dissidents than they released over the past 12 months. Prominent dissidents in custody as of May 28, 1993 and free as of May 16, 1994 include Wang Juntao and Chen Ziming (after serving five years of 13 year sentences) and Tibetans Gendun Rinchen (detained in Lhasa on early May 1993 and released January, 1994) and Lobsang Yonten (also released in January, 1994). Prominent dissidents detained since May 28, 1993 and still in custody as of May 16 include Wei Jingsheng (released after 14 years in prison in September 1993 and detained again in April), Fu Shenqi (June 1993), Zhang Xianliang (June 1993), Qin Yongmin (November 1993), Li Guiren (February), Zhou Guoqiang (March), and Yuan Hongbing (March). Dozens of individuals arrested and sentenced for activities during the Tiananmen era (1989) such as Liu Gang, Ren Wandong, and Bao Tong remain in prison.

In March, the Chinese provided limited information on the status of some of the 235 prisoners from a list presented by Assistant Secretary of State Shattuck last October. In May, similar information was provided for 107 Tibetan prisoners from a list presented in March. The quality of this information is the same as was provided Secretary Baker in response to a similar request in 1991. The highly general Chinese reply, while providing some information, did not address our request for dates of arrest, charges, location of detention, convictions, and length of sentence imposed.

### o Humane Treatment and Access to Prisoners

The Chinese have held two rounds of formal talks with the International Committee of the Red Cross, most recently in April, concerning ICRC access to prisoners in Chinese prisons and labor camps. These talks are expected to continue but no visits have occurred or been scheduled. The ICRC has its own standards for prison visits, applied consistently worldwide, which are in conflict with Chinese law proscribing any contact with prisoners by foreigners unless they are relatives or consular officers fulfilling official responsibilities. The two sides need to bridge this gap, among others. There continue to be credible reports of torture and other abuse of prisoners. The Chinese acknowledge that some such abuses occur, adding that this is contrary to national law and policy and pointing to a instances of investigation and punishment of offenders.

The Chinese have permitted only extremely limited and tightly controlled access for foreigners to Chinese prisons. For example, Assistant Secretary Shattuck visited

UNCLASSIFIED

## UNCLASSIFIED

a prison in Lhasa in October and was allowed to talk briefly under controlled conditions with a Tibetan inmate detained on political charges. Under such conditions it is impossible to provide an accurate assessment of the treatment of prisoners.

### o Tibet

The Chinese government acknowledged publicly in April that talks have been held in the past with representatives of the Dalai Lama (most recently during the summer of 1993). The Chinese have made a renewal of these talks conditional upon the Dalai Lama renouncing Tibetan independence claims and ceasing "his activities to split China." The Chinese say the lines of communication with the Dalai Lama remain open, but there seems little chance, at this point, of any movement on holding talks in the near future. The Dalai Lama has met the only Chinese precondition stated in the past for conducting talks with him or his representatives --as recently as April 27 in New York he has made it clear he is willing to talk to the Chinese without independence being on the agenda. Beijing, however, has not responded positively to our knowledge.

The Chinese continue to subsidize the Tibetan economy, rebuild monasteries destroyed during the cultural revolution, and expand instruction in the Tibetan language in schools. The unchecked influx of migrants from other parts of China into Tibet's cities spurred by economic reform policies and loosening of internal travel restrictions has the potential to undermine traditional Tibetan society and culture. Tight government controls on the number and the activities of monks and monasteries continue, as does physical abuse of imprisoned Tibetans.

### o International Radio and TV Access: VOA

Following Secretary Christopher's March talks in Beijing, the Chinese received technical information on continuing but intermittent and locality-specific jamming of VOA broadcasts. After reviewing the technical data, the Chinese held talks starting May 20 with a team of U.S. experts on this issue.

The Chinese contention that VOA broadcasts--in English, Mandarin and Tibetan--can be heard throughout China is accurate. There is no interference with English-language broadcasts, while the continued intermittent jamming of Mandarin and Chinese language broadcasts seems to be keyed to particularly sensitive subjects, moments and areas.

Generally, foreign radio broadcasts are heard without difficulty; foreign newspapers and magazines are widely available in major urban areas; telephones, faxes and even computer modems are increasingly in evidence; satellite

UNCLASSIFIED



# UNCLASSIFIED

-8-

dishes dot the urban landscape, and increasingly the rural as well, despite new regulations--thus far unenforced--proscribing unlicensed receivers; and Hong Kong and Taiwan Chinese language TV broadcasts are received via satellite throughout China.

## Other Areas Specified in May 28, 1993 Report to the Congress

POW/MIA Matters Over the past year, PRC cooperation with the U.S. on POW/MIA matters has been very good. Responding positively to U.S. requests, China allowed U.S. military POW/MIA expert teams to conduct surveys at four Vietnam-era crash sites in southern China and to repatriate the remains of U.S. servicemen from a World War II crash site in Tibet. The four Vietnam-era cases involve eight airmen, all of whom are listed as "killed in action, body not recovered." These eight individuals, whose aircraft were shot down by PRC forces when they strayed over Chinese territory, represent the only unresolved cases of U.S. servicemen missing in action in Chinese territory from the Vietnam War. The Chinese went to great efforts to recover remains and evidence discovered by local hunters at a remote, mountainous site in Tibet. The World War II-era wreckage had only recently been uncovered because of melting glacial ice.

Family Planning We conducted a satisfactory dialogue with the Chinese which shed light on family planning policy and answered concerns which had arisen internationally about the intent and implementation of a new Chinese eugenics law. Reports persisted of arbitrary behavior by provincial or local Chinese government officials in implementing central policy restricting family size, but senior central authorities maintained that national policy emphasizes education and forbids coercion (whether by abortion or sterilization). When we brought to Chinese attention specific concerns aroused by foreign press reports of a new eugenics law, Foreign Minister Qian expressed appreciation for our role in ensuring that misunderstanding of China's policy did not occur. He explained that the law had been modelled on foreign legislation to provide for the health and welfare of mother and infant, but, following the adverse international reaction, had been sent back to committee for study and redrafting to assure that the final language left no room for doubt.

## Fair, Nondiscriminatory Trade Practices

Section 3 of E.O. 12850 directed that appropriate officials of the United States pursue resolutely all legislative and executive actions to ensure that China abides by its commitments to follow fair, nondiscriminatory trade practices

UNCLASSIFIED

## UNCLASSIFIED

in dealing with U.S. businesses.

China is the most important emerging market in the world for American exports. American exports to the world in 1993 grew at 4 percent, to Asia at 6 percent, and to China at 17 percent. American firms over the next two months will compete for, and hopefully win, over six billion dollars worth of industrial and infrastructure contracts in China. Market projections out to the turn of the century are conservatively estimated at around \$70 billion for Chinese infrastructure projects. We have an important stake in preserving and opening the Chinese market and we are using a wide range of administrative and legislative tools to do so.

Our policy of high level engagement with China has afforded us several opportunities to further American economic, commercial and trade interests. The Joint Economic Commission, chaired by Treasury Secretary Bentsen during his visit to China in January helped to strengthen Chinese resolve to unify their currency system and push for more reforms in the Chinese financial sector which will benefit American banks and American business. He also furthered our goal of improving implementation of the Prison Labor Memorandum of Understanding. The Joint Commission on Commerce and Trade, Chaired by Commerce Secretary Brown in April strengthened commercial ties between American firms and their Chinese counterparts. It also established several working groups which will continue to bring to the attention of Chinese authorities the concerns of the American business community. The Joint Commission on Science and Technology, chaired by the President's Science Advisor, Dr. Gibbons, in April gave another boost to our Science and Technology relationship with China. The meeting approved continued cooperation between various Chinese and American agencies in various technical fields which could have important implications for America research and development in many fields.

We are not reluctant to use legislatively mandated trade actions when necessary. However, we seek to resolve trade differences through consultation, not confrontation, whenever possible. We are now in the early stages of discussions on trade in services with the Chinese. We are examining possible market opening measures China might take in the telecommunication, distribution, and insurance markets as well as discussing possible improvements in treatment of American businesses establishing offices in China.

We are devoting a great deal of time and attention to China's application to enter the GATT and WTO. We, along with most other GATT contracting parties support China's desire to become a full member of the world trading community as soon as possible. We are working with China to be sure that China's entrance into GATT and the WTO will be on sound economic and commercial principles.

## UNCLASSIFIED

# UNCLASSIFIED

-10-

There are some issues where we have not been able to use consultation alone to protect American economic and trade interests. During the last half of 1993 down to the present, we have been vigorously pursuing Chinese implementation of the October 10, 1992 Market Access Agreement. Our determination to use the retaliatory authority available under section 301 of the Trade Act was a factor in obtaining Chinese compliance with the Market Access agreement. At the end of December we used our authority to set new bilateral textile quotas at significantly lower levels to put the Chinese on notice that continued textile quota evasion would not be tolerated. We subsequently signed an agreement which not only contained stiffer language on textile transshipment than the previous agreement, but also, for the first time, brought silk garments under the agreement. During early 1994 negotiating teams continued talks on enforcement of the December 1992 agreement on protection of intellectual property rights. China could be named a priority foreign country under the special 301 provisions of the Trade Act of 1988 if it does not, by early July, take significant actions to strengthen its IPR enforcement practices and significantly reduce the estimated \$800 million per year in IPR losses to American firms.

## Nonproliferation Issues

Section 3 of E.O. 12850 also instructed appropriate officials of the United States to pursue resolutely all legislative and executive actions to ensure that China adhered to the Nuclear Nonproliferation Treaty, the Missile Technology Control Regime Guidelines and parameters, and other nonproliferation commitments. In keeping with this guidance, this Administration has aggressively engaged China on key nonproliferation issues and, where necessary, has imposed sanctions as required under U.S. law.

China has the technology to produce all types of weapons of mass destruction and the ballistic missiles to deliver them. The PRC is also a major emerging commercial power which has had limited experience with modern export controls. China's full support for the global nonproliferation rules of the road is essential to the success of our efforts to halt the spread of weapons of mass destruction (WMD) globally.

We have engaged China in a comprehensive dialogue on nonproliferation. Nonproliferation has figured prominently in every senior-level bilateral exchange. Secretary Christopher and I have raised it in our meetings with our Chinese counterparts. Under Secretary of State for International Security Affairs Lynn E. Davis has co-chaired two comprehensive bilateral exchanges on nonproliferation. In part to ensure that our message reaches the PLA, a central player in this area, we have initiated appropriate military-to-military contact with China. At the experts level, we have sent specialists on missile controls to China, and we have hosted a senior PRC trade official responsible for export regulation.

# UNCLASSIFIED

## UNCLASSIFIED

There are hopeful signs that China is improving its behavior with respect to the export of sensitive technologies and the negotiation of regimes to control them. On nuclear weapons proliferation, the PRC supports the conclusion by 1996 of a Comprehensive Test Ban Treaty (CTBT), and it is participating in the negotiation of the treaty. The PRC is considering our proposal for a convention on the cut-off of fissile material production. Most importantly, Beijing has been a useful partner in seeking to convince North Korea to abandon its nuclear weapons program. China and the U.S. share a strong commitment to preventing the nuclearization of the Korean peninsula, and China's continuing support is of pivotal importance.

With regard to chemical weapons, China has upgraded its export controls and is working toward ratification of the Chemical Weapons Convention, to which it became an original signatory last year. Demonstrating the importance of Chinese cooperation in halting CW proliferation, the PRC in September joined Saudi Arabia, with U.S. technical assistance, in the inspection of a Chinese-flag freighter believed to be carrying CW-precursors to Iran. The thorough inspection of the ship's cargo revealed that there were no such chemicals aboard.

With regard to regional nonproliferation, China has agreed to participate in multilateral talks in arms control, nonproliferation, and regional security in South Asia. In the area of missile proliferation, aside from the transfer which forced us to impose sanctions on China last year, we have not determined that Beijing has engaged in other transfers that would trigger additional sanctions.

Despite these positive developments, we continue to have serious concerns about Chinese behavior in key areas. In the most important development, last August we imposed sanctions on China for a transfer of M-11 missile-related equipment to Pakistan. This demonstrated my Administration's commitment to respond aggressively to improper Chinese behavior. Beijing has indicated that these sanctions have forced it to reconsider its commitment to the MTCR. Until China notifies us that it has abandoned the commitment, however, we continue to regard it as being fully in effect. Meanwhile, we have tabled a draft agreement under which China would upgrade its missile commitments sufficiently to permit us to lift the sanctions. We and the Chinese have held detailed exchanges on the draft and will continue these in the months ahead.

Chinese companies continue to sell materials and equipment with chemical weapons applications to countries of concern, particularly Iran. In the area of nuclear technology, we regret China's willingness to sell nuclear reactors and related equipment to Iran and Pakistan, even when such safeguarded sales comply with international law. We also oppose China's

UNCLASSIFIED

# UNCLASSIFIED

-12-

continued nuclear testing, which we have urged Beijing to halt immediately. As for missiles, China continues to sell certain missile-related items to countries of proliferation concern, although we have not determined that these are destined for MTCR I systems or missiles intended to carry WMD.

My Administration will not flag in its efforts to secure full Chinese compliance with international nonproliferation standards. We will continue to urge Beijing to upgrade its commitments in this area, and, where necessary, we will not hesitate to impose new sanctions.

---

UNCLASSIFIED

drafting information: UNCLASSIFIED

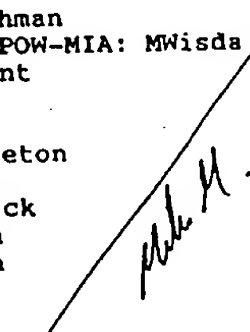
REPORT TO CONGRESS CONCERNING EXTENSION OF WAIVER  
AUTHORITY FOR THE PEOPLE'S REPUBLIC OF CHINA

drafted: EAP/CM:  
DWKeyser/MMichalak/DKelly/ACarlson/GWilliams/  
FHart/ABreiter  
[SECMDR 1569 5/23/94 noon x-76803]

cleared: EAP: WLord  
EAP: PTomsen

- - clearances (entirety or specific sections):

EAP/VLC: ARothman  
DOD/OASD/RSA/POW-MIA: MWisda  
PM/DRSA: JGrant  
T: JBarker  
P: WStanton  
CA/VO: SStapleton  
EB: JShelton  
H: AKirkpatrick  
HA: DBernstein  
L/EAP: JHergen  
L/EB: TBorek  
E: JMalott



UNCLASSIFIED